



U.S. Citizenship
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Services

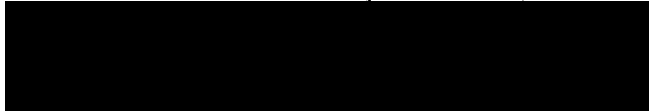
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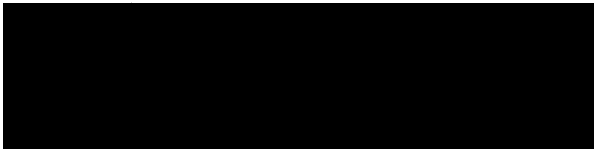
Date: AUG 19 2004

IN RE: Petitioner:
Beneficiary:



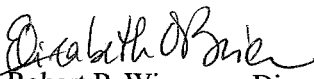
PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO summarily dismissed the appeal in error. The petitioner filed suit in federal district court, petitioning for a writ of mandamus to compel the AAO to adjudicate the petitioner's appeal of the director's decision denying the instant petition. The AAO withdraws its previous dismissal and reopens the appeal on Citizenship and Immigration Services (CIS) motion. The appeal will be dismissed.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her as an acrobat and a coach for three years. According to the evidence in the record, the beneficiary has been a performing artist with the Chengdu Acrobatic Troupe for 25 years, and has also performed with the Chongqing, Hunan and Jiannanchun Acrobatic Troupes.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner submits a supplemental brief, a brief and additional evidence.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring

participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The regulation at 8 C.F.R. § 214.2(o) requires the beneficiary "to be coming temporarily to the United States to continue work in the area of extraordinary ability." In the instant case, the beneficiary is coming to the United States to both perform and coach. While an acrobatic performer and a coach certainly share knowledge of acrobats, the two rely on very different sets of skills. Thus, acrobatics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F.Supp. 2d 914 (N.D.Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. Nevertheless, recently this office has recognized that there exists a nexus between performing and coaching a given sport or art. To assume that every performing artist's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as a performing artist and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching performing artists who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether

the beneficiary has demonstrated her extraordinary ability as a coach or as a performing artist. If the petitioner has demonstrated extraordinary ability as a performing artist, we will consider the level at which she has successfully coached.

Counsel for the petitioner argues that the beneficiary is qualified as an alien of extraordinary ability in the arts because she has received significant national prizes in her field. In the original submission, the petitioner asserted that the beneficiary satisfies this criterion because she won "numerous awards." On appeal, counsel for the petitioner asserts that the beneficiary satisfies this criterion because she won two awards, the Bronze Lion Cup Award and the Golden Lion Cup Award.¹

According to the evidence on the record, the beneficiary won third place, the Bronze Lion Cup Award, with her foot juggling performance at the Second National Acrobatic Competition in 1987. The evidence further indicates that the beneficiary received the Golden Lion Cup Award for her performance in the Rubber Thong Acrobatics² at the Third National Acrobatic Competition in 1992. The evidence indicates that the beneficiary coached the Rubber Acrobatics troupe, which won the Gold Prize in the Fifth International Amateur Acrobatic Competition in 1992.

Counsel for the petitioner asserts that the National Acrobatic Competition "is the highest level competition in acrobatic art in China." In support of this assertion, counsel submitted an item captioned "Background Materials for the Fifth Nationwide Acrobatics Competition for Golden Lion Cup." The source of this item was unidentified and is unknown. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner failed to provide any additional evidence to establish that these awards are significant national or international awards on par with an Academy Award, an Emmy, a Grammy or a Director's Guild Award as required by the regulation. The petitioner failed to establish that the beneficiary satisfies 8 C.F.R. § 214.2(o)(3)(iv)(A).

As noted below, the petitioner submitted an article published in the November 3, 2000 edition of *Liberation Daily* stating that "[redacted] [sic] by [redacted] won the sole 'Future' gold prize in Paris' Eighth International Acrobatic Competition." The petitioner included a certificate from the [redacted] Troupe stating that the beneficiary was invited to lead the performance in [redacted] and that the program won the "Gold Award of the Future" in Paris in January 1994. It is unclear whether the Gold Award was won in 1994 or 2000. The article published in 2000 does not state when the award was made. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to establish that the beneficiary satisfies this criterion.

Counsel for the petitioner asserts that the beneficiary satisfies five of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

¹ The petitioner uses the term *Bronze Lion Cup Award* interchangeably with *Bronze Lion Award*.

² It is unclear whether *Rubber Thong Acrobatics* refers to a production or a troupe.

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

For criterion number one, the petitioner asserted that the beneficiary had performed lead roles in [REDACTED] and in "Spinning Blanket." The petitioner submitted evidence indicating that the petitioner was "invited to lead the program [REDACTED] and she played "leading actress" and "led [REDACTED]" for the Hunan Acrobatic Troupe." The evidence does not establish that the beneficiary played a lead, starring or critical role in these productions. It is not clear what the beneficiary's role was in "Meteor Glistens" from the petitioner's statement that she was invited to lead the production. Further, it is not enough to assert that she played a lead role. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*. The record lacks objective corroborative evidence that the beneficiary played a lead role in these productions.

The criterion requires that the petitioner establish that the beneficiary has performed *and* will perform services as a lead or starring role in productions that have a distinguished reputation. It is not enough to claim that the beneficiary played such roles in the past. The regulation requires evidence that the beneficiary will perform such roles in the future as well. The petitioner failed to submit evidence that she will perform as a lead or starring participant and failed to establish that the beneficiary satisfies this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

For criterion number two, the petitioner submitted a photograph of the beneficiary that was published in the March 5, 1991 edition of the *Sichuan Culture News*, with a handwritten caption: "famous acrobatic artist of province Yang Ping. Liu Shiyu photograph." It is not evident that the caption was in the published version of the publication.

The petitioner submitted a review of the Jiannanchun Acrobatic Troupe's performance, published in the May 20, 1991 edition of the *Zhuhai Special Zone Daily*. The beneficiary is not identified in this publication, so it cannot be considered evidence of recognition for her achievements.

The petitioner also submitted a description and photograph of the beneficiary's foot juggling performance, published in the May 20, 1991 edition of the *Zhuhai Special Zone Daily*.

The petitioner submitted a three-sentence review of the beneficiary's and the Jiannanchun Acrobatic Troupe's performance, published in the August 20, 1990 edition of the *Sichuan Daily*, and a longer review printed in the June 1, 1993 edition of the *Sichuan Culture Newspaper*, captioned, "The Jiannanchun Acrobatic Troupe Back to Suchuan After Had Finished the Commercial Performance in Mexico Successfully."

The petitioner also submitted a review of the Jiannanchun Acrobatic Troupe's performance, published in the *Shenzhen Special Zone Daily*, April 16, 1991, which mentions the beneficiary by name as the troupe's leader.

The petitioner submitted an article published in the November 3, 2000 edition of *Liberation Daily* that states that "Meteor Glistens" [sic] by Chongqing Acrobatic Troupe won the sole 'Future' gold prize in Paris' Eighth

International Acrobatic Competition.” The article does not mention the beneficiary, and does not satisfy the plain wording of the criterion.

The petitioner failed to submit evidence of the circulation, or character of these publications. A review published in a major newspaper with a large circulation is better evidence of national recognition than one printed in a local publication with a small circulation. The criterion requires that the published material appear in major newspapers or publications. Further, the reviews are not about the beneficiary; rather, they are about the Jinnanchun or Chongqing Acrobatic Troupes, and thus do not demonstrate that the beneficiary has achieved national or international recognition for her achievements as required by the regulation.

Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

For criterion number three, the petitioner submitted a testimonial written by the Chengdu Acrobatic Troupe’s President, Fu Qihui, that states that the beneficiary has performed in lead and starring roles in his troupe and for the award-winning Hunan and Chongqing Acrobatic Troupes. The petitioner has established that the beneficiary has played a lead or starring role with all three troupes and that all three troupes enjoy a distinguished reputation. However, the petitioner has failed to establish that the beneficiary will play a lead, starring or critical role prospectively with an establishment or organization with a distinguished reputation. The beneficiary does not satisfy this criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.

Counsel for the petitioner asserts that the beneficiary satisfies this criterion, in part, because she won the Gold Lion and Bronze Cup Awards. (See pp. 10-11 of brief). Counsel further asserts that the beneficiary has a record of critically acclaimed successes with her performance in two productions, “Spinning Blanket,” and “Meteor Glistens.” The petitioner failed to submit objective corroborative evidence to establish that the beneficiary has a record of critically acclaimed successes through her individual performances in these productions. According to the evidence in the record, the Chongqing Acrobatic Troupe won an award at the Eighth International Acrobatic Competition in Paris for its production of the “Meteor Glistens.”

Counsel asserts the beneficiary “led a major commercial engagement in Mexico,” citing an article submitted in evidence (See Exh. 20-D). The article states the troupe earned a “commercial profit” of approximately \$300,000 U.S. dollars. The petitioner failed to establish through comparative evidence to other troupes that a \$300,000 profit for a yearlong tour may be considered a major commercial success.

It is noted that counsel attributes the success of the above-mentioned programs and troupes to the beneficiary without explaining how or submitting corroborating evidence to establish that the troupe’s success can be claimed by one individual alone.

The petitioner submitted an unsigned certification from the Chengdu Acrobatic Troupe that states:

This is to certify that [the beneficiary] has been an performing artist with our Troupe since 1976 [until] 2000. During her tenure of 25 years with us, [the beneficiary] had participated

in 5000 performances . . . earning 75,000,000 RMB in box office income. [The beneficiary] is among our artists who have the highest appearance rate in our performance, and has one of our major profit earners [sic].

It is unclear how the [REDACTED] can attribute box office income to one of its many performers. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*. The beneficiary does not satisfy this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

For criterion number five, the petitioner submitted testimonials written by the President and Vice President of the China Acrobats Association and the Chairman of the Sichuan Acrobats Association. These testimonials cannot be given any weight because they are not in a form that clearly indicates the author's expertise.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

No evidence was submitted in relation to this criterion.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person with a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered. The petitioner has not established that the beneficiary has extraordinary ability in either coaching acrobatics or as a performing artist.

The regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

In a request for evidence dated June 16, 2003, the director asked the petitioner to submit a consultation, among other items. In response, the petitioner submitted a consultation from [REDACTED], the Executive Director of the American Folklore Society. The petitioner failed to establish that the American Folklore Society is an appropriate U.S. peer group for a Chinese acrobat such as the beneficiary. The petitioner has not satisfied this requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.